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<b>DANIEL R. KNAPP, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 05-421</b>
	)	<b>Issued: August 4, 2005</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Portland, ME, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge

On July 20, 2003 appellant, then a 50 year-old lead security screener, filed a traumatic injury claim stating that on that day a bag he was lifting rolled over his toe which caused him to

lift his foot, straining his back. He stated that he had mid-lower back pain and right knee pain as a result. Appellant did not stop work.

Initially, appellant submitted reports from Katerina Diederichs, a nurse practitioner, who noted an injury and reported treating appellant. On October 22, 2003 he submitted a Form CA-7 claim for compensation for September 4 to 20, 2003. The employing establishment noted that appellant was on leave without pay for intermittent periods for physical therapy.

By letter dated November 17, 2003, the Office advised appellant that the information submitted in his claim was not sufficient to establish entitlement to benefits. He was directed to provide a detailed narrative medical report from his physician including a history of injury and all prior work-related and nonwork-related injuries. The Office also requested that the report include the physician's opinion, with medical reasons for such opinion as to how his condition was caused or aggravated by the employment.

In a hospital report dated November 11, 2003 and received by the Office on December 3, 2003, Dr. James M. McKenna, Board-certified in anesthesiology, stated that appellant had been symptomatic with left lower extremity pain for four months. He related his mechanism of back injury, noting that he lost control of a suitcase while trying to lift it, twisting his back and causing pain that had worsened over time. Dr. McKenna noted no prior back surgery or back injuries. After a physical examination he found that appellant had subacute left lower extremity radiculitis as a result of a work-related injury and recommended lumbar spine x-rays to determine any degenerative disc disease.

In a report dated November 20, 2003, Dr. Peter J. Dirksmeier, a Board-certified orthopedic surgeon, stated that November 11, 2003 x-rays revealed anterolisthesis at L4-5, sclerosis at L4-5 facets and angulations suggestive of pars fractures, spondylolisthesis at L4-5 and degenerative disc disease throughout. He noted a work-related injury on July 20, 2003.

On December 2, 2003 appellant submitted a Form CA-7 claim for compensation for November 2 to 15, 2003. On December 12, 2003 Ms. Diederichs stated that appellant's work-related injury occurred on July 20, 2003.

In a report dated December 15, 2003, appellant stated that the July 20, 2003 incident caused immediate pain and he advised his supervisor about it. He stated that the pain kept him awake at night for two weeks which prompted him to seek medical attention.<sup>1</sup>

By decision dated December 17, 2003, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the accepted incident caused the medical condition. The Office explained that neither Dr. Dirksmeier, nor Dr. McKenna established a causal relationship between the condition and the employment incident.

In a report dated December 9, 2003 and received by the Office on December 18, 2003, Dr. Dirksmeier stated that appellant's magnetic resonance imaging (MRI) scan had revealed

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<sup>1</sup> The record included a similar but unsigned narrative dated December 23, 2003.

anterolisthesis at L4 relative to L5 due to hypertrophy of ligamentum flavum and bilateral facet arthropathy causing moderate stenosis and left foraminal stenosis at L4-5. He requested authorization for epidural steroid injections and prescribed additional physical therapy.

In a report dated January 5, 2004, Dr. Edwin L. Charle, Board-certified in family medicine, stated that appellant had back pain and sciatica “and his history suggests that it is work related.” On January 8, 14 and 20, 2004 Dr. McKenna performed lumbar epidural steroid injections at L4.

On January 15, 2004 appellant requested an oral hearing.

In a report dated February 17, 2004, Dr. Dirksmeier stated that appellant had degenerative spondylolisthesis at L4-5, lumbar stenosis with radiculitis in the left lower extremity and acute low back pain. He stated that appellant’s condition started on July 20, 2003 as a result of a lifting incident at work. Dr. Dirksmeier also noted a history of intermittent low back pain since 1996 diagnosed as degenerative disc disease at L4-5 which had been treated conservatively. However, he noted that appellant’s recent episode of back pain has worsened his condition and became debilitating. Dr. Dirksmeier noted that epidural injections provided transitory relief and that his pain has returned to its prior state. He found that appellant had debilitating spondylolisthesis at L4-5.

In a report dated March 15, 2004, Dr. Dirksmeier stated that appellant had persistent and worsening low back pain and left leg pain and that he was scheduled for lumbar decompression and instrumented fusion at L4-5. Appellant would be restricted from moderate activity for six weeks and would be released to full duty three months after the surgery.

On April 26, 2004 Dr. Dirksmeier performed lumbar laminectomy at L4-5, bilateral foraminotomies at L4, L5 and S1, fusion at L4 and L5 and a left iliac bone graft for the fusion. On May 18, 2004 Dr. Dirksmeier stated that appellant had degenerative spondylolisthesis at L4-5. He was released to return to full-time duty by Dr. Dirksmeier on October 22, 2004.

Appellant also submitted various medical records including several medical reports from Dr. John Bloom, a Board-certified orthopedic surgeon. In treatment notes dated July 10 and 25, 1989, he stated that he treated appellant for musculoligamentous injury to the cervical spine that he sustained in a vehicular accident on June 13, 1989. On August 29, 1989 Dr. Bloom stated that appellant’s cervical spine sprain was resolving. In treatment notes dated January 17 and April 26, 1990 he treated him for musculoligamentous sprain, cervical spine, that had improved and that his symptoms of cervical disc had resolved. On August 20 and September 26, 1990, Dr. Bloom treated appellant in follow-up for musculoligamentous injury to his cervical spine and back. In a report dated March 6, 1996, he stated that he treated him for increasing low back pain and right knee discomfort. Appellant noted that he had had back discomfort with increasing symptoms during the work week, but, that it subsided on weekends. Upon examination, he had low back discomfort to the right of the midline of the lumbar spine, tender to palpation. Regarding the spine, Dr. Bloom noted disc narrowing, significant vertebral end plate abnormality consistent with Schmorl’s nodes at multiple levels, noting it “probably represents a variant of degenerative disc disease.” He diagnosed degenerative disc disease lumbar spine. On

October 25, 2002 Dr. Bloom stated that appellant had degenerative disc disease with abnormalities in the lumbar spine, possible Schmorl's nodes and narrowing of disc space in the upper portion of the lumbar spine. He noted that appellant was "perhaps a little worse than six years ago."

A hearing was held on August 26, 2004 and by decision dated November 19, 2004, a hearing representative affirmed the Office's December 13, 2003 decision, affirming the Office's December 17, 2003 decision, denying appellant's claim that he sustained a work-related injury on July 20, 2003.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees Compensation Act has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative

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<sup>2</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>3</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>4</sup> *Id.*

<sup>5</sup> Leslie C. Moore, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

In this case, appellant stated that he injured his back while lifting at work on July 20, 2003. The Office accepted that the claimed event occurred. The Office denied the claim on the grounds that the medical evidence was insufficient to establish that the July 20, 2003 incident caused or aggravated an injury.

The Board finds that the medical evidence of record fails to establish a work-related injury on July 20, 2003. In his November 11, 2003 report, Dr. McKenna noted appellant's back injury but did not provide a date of injury. Further, he related an inaccurate history of injury, noting that appellant had no prior back injuries.<sup>7</sup> As noted in the factual history, Dr. Bloom's reports indicate that he had a history of back symptoms and treatment prior to the claimed injury.

In his February 17, 2004 report, Dr. Dirksmeier stated that appellant's condition was causally related to the July 20, 2003 employment incident but did not explain how the lifting and twisting incident would have caused or aggravated the diagnosed conditions. He noted appellant's history of a prior back condition but did not explain the impact, if any, of the prior back condition on the conditions he diagnosed after the claimed employment injury. Other reports by Dr. Dirksmeier either did not provide medical rationale to support his opinion on causal relationship or did not address causal relationship.<sup>8</sup>

Dr. Charle's report was speculative, in that he stated that appellant's history suggested a work-related causal relationship and thus, has limited probative value. An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>9</sup> The reports of Ms. Diederichs, a nurse practitioner, are not medical reports and thus, have no probative value.<sup>10</sup>

Consequently, the medical evidence is insufficient to establish that the July 20, 2003 employment incident caused or aggravated a diagnosed condition.<sup>11</sup>

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<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> See *John A. Ceresoli, Sr.*, 40 ECAB 305, 311 (1988).

<sup>8</sup> *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of the employee's condition is of limited probative value on the issue of causal relationship).

<sup>9</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>10</sup> See *Bertha L. Arnold*, 38 ECAB 282, 285 (1986). For the definition of a physician, see 5 U.S.C. § 8101(2).

<sup>11</sup> On appeal, appellant submitted a July 23, 2004 report from Dr. Dirksmeier. The report was not before the hearing representative when the November 19, 2004 decision was issued. Consequently, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c). See *Rosemary A. Kayes*, 54 ECAB \_\_\_\_ (Docket No. 02-1397, issued January 23, 2003) (the Board may not consider new evidence on appeal).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 19, 2004 is affirmed.

Issued: August 4, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board